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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

IMAGE 2000 MULTIMEDIA, INC. et al., Plaintiffs and Respondents, v. YVONNE T. QUIN, as Trustee, etc., Defendant and Appellant.	D055719 (Super. Ct. No. 37-2007-00062035-CU-BC-EC)
YVONNE T. QUIN, as Trustee, etc., Plaintiff and Appellant, v. IMAGE 2000 MULTIMEDIA, INC. et al., Defendants and Respondents.	(Super. Ct. No. 37-2008-00033205-CL-UD-EC)

APPEAL from a judgment of the Superior Court of San Diego County, Eddie C. Sturgeon, Judge. Reversed with directions.

Appellant Yvonne T. Quin, as trustee of the Joseph Quin Family Trust (Landlord), was the losing party in a bench trial on these two consolidated cases, which involved disputes over the lease terms of a standard Industrial/Commercial Single-Tenant Lease (the lease), and over possession of the subject commercial premises. At that location, from 2002-2004, respondent Image 2000 Multimedia, Inc. (Image 2000), was serving drinks and doing business as El Cajon Grand Cocktail Lounge.

In 2004, Image 2000 created, for administrative purposes, a wholly owned corporation, respondent El Cajon Grand Cocktail Lounge, Inc. (Lounge). Also in 2004, Image 2000 obtained Landlord's consent to assign its leasehold interest to Lounge. (Lease, par. 12.1.) The principals of both of these respondent entities, Alexander Kalogianis and Jason Kreider, are the personal guarantors of the Image 2000 lease, and they are also parties to this appeal. (At times, we will refer to these four respondents, Image 2000, Lounge, Kalogianis and Kreider, collectively as Respondents.)

The lease contains language and an addendum stating that an option to extend the five-year term of the lease is "personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting." The addendum incorporates all the terms and conditions of the lease "except where specifically modified by this option." (Lease, par. 39.2.)

The problem presented here is whether this "personal" option was assigned to Lounge by the original lessee, Image 2000, when the lease was assigned in 2004, or if it was excepted from the transfer by its own language. Other disputes arose between the

parties in 2005, when they were sued by a disabled person who sought to require some or all of them to make and pay for building alterations pursuant to the Americans With Disabilities Act (*Quin v. El Cajon Grand Cocktail Lounge* (Nov. 6, 2009, D052193) [nonpub. opn.], the "ADA action"). In 2007, during the pendency of that separate ADA action, Respondents, acting through the assignee Lounge, attempted to exercise the "personal" option to extend the lease for an additional five-year term. Landlord objected that Lounge was ineligible to do so, because it was not the "original Lessee" in possession, and these actions were brought.

The first of the two actions tried by the superior court was the "Option Case," in which Image 2000 et al. sued Landlord for breach of contract, etc., seeking to enforce the terms of the option to extend the lease. Respondents argued at trial that during the negotiation of the lease, they placed Landlord's agent on notice that they would be adding a new tenant to the lease, in the form of a new company, and that the option to extend amounted to part of their consideration for entering into the lease.

In the second action, Landlord brought unlawful detainer allegations (the "UD action"), seeking to evict Respondents from the premises for alleged defaults under the lease, including but not limited to their failure to provide adequate liability insurance to the specifications of the lease. Landlord maintained at trial that the option to extend remained personal to the original lessee, Image 2000, such that the attempted assignment of the option rights, and any extension of the lease, each failed as a matter of law, under these circumstances. Landlord also argued that the lease had expired and/or that Respondents were in default under the lease, due to their failure to make or pay for the

required ADA repairs, and for other reasons (including inadequate insurance coverage), such that their existing month-to-month tenancy should be terminated.

After trial, the superior court issued a statement of decision and judgment that interpreted the lease as allowing all of it, including the option to extend, to be assignable by the original lessee, Image 2000. The court found that the 2004 lease assignment by Image 2000 to its separately formed and wholly owned corporation, Lounge, was done with Landlord's approval. Thus, the court impliedly concluded that the personal option to extend the lease was validly assigned to Lounge, based on parol evidence presented by Respondents to the effect that they told Landlord's agent during negotiations that a new tenant would eventually be added to the lease. The court therefore ruled that when the lessee in possession of the property in 2007, the assignee Lounge, exercised the option, it did so properly, so that the lease was effectively renewed for a five-year term.

Because of those conclusions in the Option Case, the court denied any relief to Landlord in the UD action, and Respondents became the overall prevailing parties.

Landlord appeals from the resulting judgment, arguing the court erred as a matter of law in interpreting the lease and its expressly limited personal option to extend. It contends the proper construction of the unambiguous lease and extension provisions amounted to questions of law for the court, and the court erred in finding ambiguity and therefore erroneously admitted and considered the parol evidence about Respondents' wishes and understanding of the lease arrangement and extension provision.

We read the option contract as separate and distinct from the lease, for purposes of the assignment, and determine that the offer represented by the option was expressly

restricted to the original lessee, Image 2000, and the assignment provisions of the lease were not broad enough to encompass an assignment of the option to extend. (See *City of Orange v. San Diego County Employees Retirement Assn.* (2002) 103 Cal.App.4th 45, 51 -52 [" '[W]here there is an option contract, there are two contracts, the option contract and the contract to which it relates.' [Citation.] The option contract 'is clearly different from the contract to which the irrevocable offer of the optionor relates. . . .' "].) We agree with Landlord that the personal option to extend the lease term retained the original lease provisions and did not specifically modify them, as would have been required for the parties to the personal option to be changed. Rather, the option was unambiguously granted only to the original lessee, and the consent of Landlord to the assignment of the lease interests to Lounge did not allow Lounge to exercise the option.

We conclude the trial court erred in ruling in favor of Respondents on the Option Case. The UD action was not properly resolved, due to remaining factual and legal disputes about whether the original lessee Image 2000, or the assignee Lounge, were in default under the terms of the lease while in possession of the premises, and whether the same insurance requirements of the lease continued to bind the parties during the month-to-month tenancy that was created after the lease expired. We reverse the judgment with directions to rule in favor of Landlord on the Option Case and to allow further appropriate proceedings on the UD action.

FACTUAL AND PROCEDURAL BACKGROUND

A. Lease and Assignment; Filing of ADA Action

In 2002, Landlord's real estate agent Chris Kugler negotiated the terms of the five-year lease with Image 2000 representatives, Kalogianis and Kreider, who wished to continue an existing cocktail lounge business there. As will later be explained in more detail, Kalogianis and Kreider testified that during negotiations, they informed the agent that they intended at some point to create a new entity, Lounge, for internal administrative purposes and to operate the business. However, at that time, only their existing media business, Image 2000, had the necessary resources and credit to enter into such a lease. The named lessee is Image 2000 dba Lounge.

Paragraph 39.2 of the lease grants an option to extend that is "personal to the original Lessee, and [which] cannot be assigned or exercised by anyone other than the original Lessee and only while the original Lessee is in full possession of the premises . . . ." Paragraph 39.4 of the lease defines the effect of a lessee's default under the lease upon any right to exercise the option, stating that a lessee in default on rent or in breach of lease loses the right to exercise the option to extend. Paragraph 13 of the lease further defines the circumstances under which a lessee is in default under the lease. The lease includes provisions regulating insurance requirements, repair responsibility, indemnification duties, and the like. The property was rented in an as-is condition. (Lease, pars. 2.2, 7, 8.)

The standard addendum, option to extend, lists numerous conditions for the exercise of the option, such as following the type of notice to landlord that is specified,

and complying with the provisions of paragraph 39 of the lease, including those that define any defaults that may occur. (Addendum, par. A(ii).) "This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original lessee is in full possession of the premises and without the intention of thereafter assigning or subletting." (Addendum, par. A(iv).) Paragraph A(iii) of the addendum reiterates that all the terms and conditions of the lease "except where specifically modified by this option shall apply," thus separating out the lease provisions granting the option. Paragraph D of the addendum provides that the option shall be deemed invalid at Landlord's discretion, if any of the terms of the lease have been in default, or if agreed upon regulations for the use of the property were not met. The option states as a condition that the base market rental amount must be adjusted, before the option is exercised.

Paragraph 12.1 of the lease requires that the lessee obtain consent by the Landlord for any assignment of "all or any part of Lessee's interest in the Lease or in the Premises," although such consent shall not be unreasonably withheld.

In 2004, Image 2000 formed Lounge as a separate corporation, and then assigned the lease to Lounge, after obtaining the approval of Landlord. The assignment document recognized that Image 2000 would not be released from any obligation under the lease to Landlord, nor would the assignment change Image 2000's primary liability to pay rent and perform other obligations under the lease. Kreider and Kalogianis consented to the assignment to Lounge, and acknowledged they would remain fully obligated as

guarantors of the lease. In Landlord's signed consent, it did not waive or relinquish any rights under the lease against either Image 2000, Lounge, Kreider, and/or Kalogianis.

Before the February 2007 attempt to exercise the personal option to extend the lease occurred, these same parties became embroiled in the related ADA action that was brought in 2005, and that was previously before this appellate court and resolved in our prior unpublished opinion. We next set out additional background facts of the 2002-2007 lease relationships and the ADA dispute, as summarized in that prior opinion. The parties tried that ADA action upon a joint stipulation of undisputed facts, as follows.

"In December 2005, a disabled individual [Terry] sued the parties (including Landlord and Respondents) for damages as well as injunctive and declaratory relief in part on grounds their facilities violated the ADA [the ADA action]. [Terry] sought to have Landlord and respondents make the necessary improvements, modifications and repairs to the premises to ensure compliance with the ADA. In March 2006, Landlord . . . answered the complaint and filed a cross-complaint against respondents for equitable indemnity, equitable apportionment and contribution, declaratory relief and breach of contract, alleging the lease required respondents to defend and indemnify her for any damages or payments made to [Terry] in the ADA action. Respondents also answered and cross-complained against Landlord alleging causes of action for declaratory relief, breach of contract, negligence, premises liability, contribution and apportionment and injunctive relief.

"In May 2006, Landlord and [Terry] in the ADA action reached a settlement in which Landlord paid [Terry] $6,000, Landlord agreed to make specified changes to the

premises, and [Terry] agreed to release all of the defendants and dismiss his action with prejudice." The repairs cost over $5,400, which Landlord paid, giving rise to a total settlement price of $11,463.

That settlement left the cross-complaints between Landlord and Respondents still at issue in the ADA action, through July 2007, when trial was scheduled. "Thereafter, the parties submitted their stipulation of undisputed facts and contested legal issues in which they asked the trial court to resolve who bore responsibility for ensuring the premises met ADA standards. Alternatively, they asked the court to decide whether the parties each bore responsibility in some proportionate share."

B. Efforts to Exercise Option

Meanwhile, Landlord and Respondents were continuing to have major differences about the responsibility for those repairs. During the pendency of the ADA action, Respondents were represented by an attorney for the law firm of "Lawyers against Lawsuit Abuse," David Peters. In reference to that ADA action, Peters sent a letter regarding the option to the then-attorney for Landlord (Gary Slater), dated February 29, 2007 (actually Feb. 28, 2007 since there was no leap year at that time). This letter (Peters' letter) included language requesting that Landlord accept the letter "to serve as notice of Lessee's exercise of the option to extend" the lease. The letter does not specify which entity was the Lessee, and it assumes that the notice of the exercise would be timely and sufficient, and states that it was not intended to waive any right or remedy of any of the Respondent clients.

Landlord has consistently refused to accept Lounge's exercise of the "personal" option, from March 2007-forward. The term of the lease was set to expire at the end of April 2007.

C. Related ADA Trial Held; Prior Appeal

In July 2007, the ADA dispute proceeded to a bench trial before Judge Jan Goldsmith (now retired). As summarized in our prior opinion, Judge Goldsmith ruled in favor of Landlord by interpreting the lease to impose the costs of the ADA repairs upon Respondents. "In oral findings interpreting various provisions of the lease in view of the numerous strike-outs, as well as assessing the relationship of the cost of curative action and the rent obligation, the nature of the curative action, and the likelihood that the parties contemplated the ADA's application, the court ruled that [Landlord's] responsibility for ADA compliance had been shifted to respondents. It found [Landlord] the prevailing party on her cause of action." After trial, the parties litigated the attorney fees issues.

In our prior opinion in the ADA matter, we resolved the only remaining dispute (attorney fees issues). In the course of his decision to give Landlord $21,123.75 fees (less than the $171,569.50 requested), Judge Goldsmith made the following observations with regard to the dispute between Landlord and Respondents about who should pay for the ADA repairs: "After the May[ ] 2006 settlement with [Terry, the ADA plaintiff], [Landlord and Respondents] continued to litigate to determine which party had responsibility for the $11,463.00 settlement. The issue was contractual interpretation based upon the wording of the lease and surrounding circumstances. The court is quite

familiar with lease interpretation cases similar to that involved in this case. . . . [¶] . . . The only issue was interpretation of the lease agreement. It was a simple and straightforward case that was presented to the court as a short cause trial whereby most of the facts were stipulated to. The parties and attorneys knew since May[ ] 2006, that the amount in controversy was liquidated at $11,463.00 plus attorney fees and costs."

In his ADA findings, Judge Goldsmith stated that he was merely interpreting the lease, and expressly declined to find any "willful" breach of the lease by Respondents.

Landlord appealed the July 2007 order after hearing. In our prior opinion, we reversed the postjudgment order for attorney fees and remanded the matter with directions, effective November 2008.

D. Current Pleadings; Trial; Judgment

While the ADA action was still on appeal, on October 29, 2007, Respondents filed their Option Case, alleging breach of contract and seeking damages and declaratory relief that they had validly exercised the option to extend the lease. Disputes were developing about whether Respondents were maintaining all the required liability insurance, including sufficient liquor liability coverage. In November and December 2007, Landlord served a 10-day notice to cure and a 30-day notice to quit. Also in December 2007, Landlord filed its general denial in the Option Case.

On January 24, 2008, Landlord filed its UD action, contending that Respondents were in breach of the lease in numerous respects, particularly as to liability and liquor liability insurance requirements. (Lease, par. 8 et seq.)

Shortly before the consolidated pleadings went to trial before Judge Sturgeon in July 2008, Landlord brought a motion for judgment on the pleadings. Landlord argued that the underlying findings in the ADA action amounted to a conclusive finding that Respondents had breached the lease by failing to make and pay for the ADA repairs. Under paragraph 39.4 of the lease, a party in breach is in default and is not entitled to exercise the option to extend. The trial court denied the pleadings motion on the grounds that factual issues remained on breach of the lease, with regard to whether Lounge could validly exercise the option to extend. The court stated that factual issues remained about whether Respondents' actions showed that they were in breach of the lease or otherwise ineligible to exercise the option, and about whether the insurance policies conformed with the requirements of the lease.

At trial, the court again declined to find that the previous ADA ruling, issued as declaratory relief that interpreted the lease, had any controlling effect upon the issues before it, about Respondents' breach of the lease, for purposes of establishing whether Lounge was in default under the lease at the time the option was exercised.

The court took testimony from the principals of Respondents, as well as their former attorney Peters, about the 2007 efforts to exercise the option. According to Kreider, during the 2002 lease negotiations, Respondents expressed to Landlord's real estate agent that they wanted to take the lease in the name of Lounge, but knew they could not do so until after a probationary period passed, for creating it and establishing its credit. Although they were assessed the costs of the ADA repairs, they had not paid them before they exercised the option.

According to testimony from Kalogianis, he believed during the 2002 negotiations that "we" would be allowed to extend the lease after the initial period, and he relied on the proposed extension as an incentive for Image 2000 to proceed and to invest money in the business during the initial lease term.

The trust manager of Landlord, Quin, testified that she did not talk to Respondents and was never told by her real estate agent (Kugler) that Image 2000 intended to place another tenant on the lease. Landlord did not serve separate notices of default on Respondents, based on the ongoing ADA action, before they notified it of the exercise of the option. The parties did not show whether the base market rental amount had been adjusted, as contemplated by the option addendum, before it was exercised.

Once the initial ruling was made that the option was validly exercised by Lounge and/or Image 2000, the court proceeded to hear testimony from the insurance agent for Respondents, Jodi Hollow, about her opinion that the insurance policies she obtained for them, at the request of Landlord, conformed with the requirements of the lease. The parties disputed whether Respondents were in various types of default under the lease, regarding insurance, the failure to make ADA repairs, etc.

Exhibits were accepted and admitted, including the lease, the assignment, the Attorney Peters engagement agreement in the ADA action, the Peters' letter regarding the option exercise, as well as Respondents' CGL insurance policies for the premises.

Following trial, the court issued its statement of decision and judgment ruling in favor of Respondents on all issues. Landlord appeals.

DISCUSSION

We are required to determine what rights and duties were granted to the parties to the lease, under the option portion of it, particularly with respect to the assignability of the option. It is not disputed that in 2004, Landlord gave consent to the Image 2000 assignment of the lease to its newly formed and wholly owned corporation, Lounge. However, it is hotly disputed whether the "personal option" was included within that assignment, for purposes of establishing breach of lease in the UD action. These disputes continue even though the two principals, Kreider and Kalogianis, own both corporations and remain personal guarantors of the lease, largely because they have preserved the corporate separateness of Image 2000 and Lounge.

It is often said that the trend of the law is in favor of the assignability of contract rights. (1 Miller & Starr, Cal. Real Estate (3d ed. 2000) § 1:22, p. 73; 7 Miller & Starr, *supra,* § 19:61, p. 166 (Miller & Starr).) However, parties have the ability to restrict the assignability of lease provisions, and this restriction may apply to options. "*In the absence of language in the lease* indicating that the right to renew was intended as a *personal right of the original tenant only,* an option to renew is regarded as a covenant running with the land . . . ." (7 Miller & Starr, *supra,* § 19:42, p. 120; italics added.)

Contract interpretation principles will establish whether Lounge was given the capacity, by assignment, to exercise the option to extend, and if so, whether it did so properly. We first outline the issues presented and set forth our standards of review (pts. I, II). We then examine the scope of the powers granted in the lease and related option, regarding assignment, under both contract and real property principles, and then apply

them to this record (pt. III). Further, we discuss the admissibility of extrinsic evidence that was considered about the respective contractual intent of the parties (pt. IV). We then turn to the remaining issues regarding the UD action.

I

ISSUES PRESENTED

In its trial brief, Landlord represented that there were no disagreements as to any material facts about the assignment of the option, so that only legal issues were disputed. Landlord continues to contend that (1) Respondents did not and could not exercise the "personal" option in accordance with the provisions of the lease, and that the earlier assignment of the leasehold interest did not change that; (2) as a result, any rights that Respondents had under the lease, including Lounge's right to possession of the premises, terminated when the 30-day period expired, as described in the notice to quit given in connection with the UD action. At that time, Lounge had only a month-to-month holdover tenancy. Landlord therefore argued that it should prevail on Respondents' Option Case, and also in its own UD action, because they were in breach of the lease or otherwise not entitled to possession.

Respondents presented parol evidence at trial that there was a side agreement of sorts reached during the 2002 negotiations, which Landlord understood and accepted (through its agent, who did not testify), that a new tenant would eventually become liable upon the lease. Respondents argued that accordingly, when Lounge was assigned the lease, it had the power to exercise the personal option, which must have been included in the assignment. Respondents contended that they effectively and timely exercised that

option, and therefore Landlord has breached the lease, so that declaratory relief in their favor was appropriate.

On appeal, Landlord mainly contends the trial court erred in hearing and considering such parol evidence, when interpreting the lease, option, and assignment documents. According to Landlord, a plain reading of the face of these agreements shows that the original lessee, Image 2000, was the only party entitled to exercise the option, and it failed to effectively assign the personal option within the lease to Lounge, when the other leasehold interests were assigned.

II

PROCEDURAL STANDARDS

Before turning to the merits of the arguments, we first outline the appropriate standards of review. This judgment was issued following a letter ruling and minute order, and the submission of a proposed statement of decision. Landlord filed objections to the proposed statement of decision, and the court revised and issued the statement of decision.

"Where [a] statement of decision sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision." (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 358.) It is not required that a statement of decision address all the legal and factual issues raised by the parties, but rather it should state simply the grounds upon which the judgment rests, without specifying all the particular evidence considered by the trial court in reaching its decision.

(*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1124-1125 (*Muzquiz*).) Ultimate, not evidentiary facts, are required, "because findings of ultimate facts necessarily include findings on all intermediate evidentiary facts necessary to sustain them." (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 599; *Muzquiz, supra*, at p. 1125.)

Reversible error is found only where a statement of decision fails to make findings on a material issue that would fairly disclose the trial court's determination. "Even then, if the judgment is otherwise supported, the omission to make such findings is harmless error unless the evidence is sufficient to sustain a finding in the complaining party's favor which would have the effect of countervailing or destroying other findings. [Citation.] A failure to find on an immaterial issue is not error." (*Hellman v. La Cumbre Gulf & Country Club* (1992) 6 Cal.App.4th 1224, 1230.)

This statement of decision, although somewhat terse, sufficiently sets forth the reasoning of the trial court on all the material issues raised at trial. The chief and threshold issue to be resolved on appeal is whether the admission of parol evidence about the personal nature of the option agreement was erroneous and prejudicial. This legal issue can be resolved through a plain reading of the documents and record, without the need of further assistance from the statement of decision. (Pt. III, *post*.)

When the trial court heard the testimony from Respondents on contractual intent, it essentially followed this established procedure: "The decision whether to admit parol [i.e., extrinsic] evidence involves a two-step process. First, the court provisionally receives (without actually admitting) all credible evidence concerning the parties' intentions to determine 'ambiguity,' i.e., whether the language is 'reasonably susceptible'

to the interpretation urged by a party. If in light of the extrinsic evidence the court decides the language is 'reasonably susceptible' to the interpretation urged, the extrinsic evidence is then admitted to aid in the second step--interpreting the contract." (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165 (*Winet*); *Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 37.)

On appeal, a "trial court's ruling on the threshold determination of 'ambiguity' (i.e., whether the proffered evidence is relevant to prove a meaning to which the language is reasonably susceptible) is a question of law, not of fact. [Citation.] Thus[,] the threshold determination of ambiguity is subject to independent review." (*Winet, supra*, 4 Cal.App.4th at p. 1165.) We address that issue of law first, regarding the clarity or ambiguity of the personal option and assignability language in the lease. (Pt. III, *post*.)

If it is necessary to proceed beyond the de novo phase of the parol evidence analysis, an appellate court will address the substance of the extrinsic evidence under the following standards. If the contract language must be deemed to be ambiguous, as charged, and if conflicting extrinsic evidence was admitted on the meaning of that language, "any reasonable construction will be upheld as long as it is supported by substantial evidence." (*Winet, supra,* 4 Cal.App.4th at p. 1166.) Extrinsic evidence cannot be admitted for proving a meaning that "flatly contradict[s] the express terms of the agreement [lease]." (*Id.* at p. 1167; see also Civ. Code, § 1638 ["The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity."].)

In support of a judgment where resolution of factual disputes was dispositive of the case, appellate courts require substantial "evidence of 'ponderable legal significance, . . . reasonable in nature, credible, and of solid value.' " (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873, italics omitted.) We look at the entire record on appeal rather than simply considering the evidence cited by a party. (*Ibid.; Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) (Pt. IV, *post*.)

In the Respondents' brief, they object that Landlord's briefs failed to set forth a complete statement of all the relevant testimony in the record, particularly about Respondents' personal understandings and intentions about the entire lease and option arrangements (as to the inclusion of a new tenant as a party, other than Image 2000, the original Lessee). Respondents request that we rule in their favor on appeal, merely because of Landlord's supposed failure to set forth a complete and accurate statement of facts. (*Singh v. Board of Retirement* (1996) 41 Cal.App.4th 1180, 1182, fn. 1.)

However, those arguments are without merit. In light of the nature of the legal issues presented on appeal, to which that testimony would pertain, the briefs and record are more than adequate to allow us to reach the merits of the legal issues presented, and the relevant factual disputes, about the proper interpretation of the lease and option provisions. (See *Alex Robertson Co. v. Imperial Casualty & Indemnity Co.* (1992) 8 Cal.App.4th 338, 346 [the subjective, uncommunicated intent of one of the parties cannot contradict the express provisions of a contract].)

III

BASIC PRINCIPLES FOR INTERPRETATION OF LEASE AND OPTION

Principles of both contract and real estate law must be considered in construing the lease and the option agreement together and in context. We seek to effectuate the mutual intent of the parties as it existed at the time of contracting, so far as that is ascertainable and lawful. (Civ. Code, § 1639; *Ticor Title Ins. Co. v. Rancho Santa Fe Assn.* (1986) 177 Cal. App.3d 726, 730.) " 'Such intent is to be inferred, if possible, solely from the written provisions of the contract. [Citation.] . . . [I]f the meaning a layperson would ascribe to contract language is not ambiguous, we apply that meaning.' " (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 608.)

We first address the threshold determination of "ambiguity" as a question of law, both as to the lease and the option. (*Winet, supra*, 4 Cal.App.4th at p. 1165.) We next outline the legal principles that give recognized meanings to the option and assignment language.

A. Assignability of Leases

Leases are historically viewed as having a dual character, both as a conveyance of an interest in real property, and as a contract between the lessor and the lessee. (7 Miller & Starr, *supra*, § 19:19, p. 58.) The modern view construes leases and the rights and duties arising from them under general contract principles. (*Id.* at p. 59.) "[A] lease creates two sets of rights and obligations, namely, those arising by law from the relationship of landlord and tenant (privity of estate [e.g., rent]), and the contractual obligations arising out of the express stipulations of the lease (privity of contract)." (*Id.*

at pp. 58-59.) A lease normally contains numerous express covenants, such as a prohibition against assignment; others may include covenants to repair, to insure, or to pay taxes. (12 Witkin, Summary of Cal. Law (10th ed. 2008) Real Property, § 565, p. 649.)

Leases may include an express prohibition against assignment, or, as here, a specific requirement for Landlord to give consent for such an assignment (lease, par. 12.1). The reason is normally to assure that any occupant of the premises will be creditworthy: "[F]or all practical purposes, an assignment substitutes one tenant for another; and, because the parties to a ground lease have a long-term relationship, the landlord is justifiably concerned about the quality—especially the creditworthiness—of any assignee." (Greenwald & Asimov, Cal. Practice Guide: Real Property Transactions (The Rutter Group 2009) ¶ 7:66, p. 7-14 (Real Property Transactions) ["privity of estate binds the new tenant/assignee to the lease obligations for so long as it remains in possession"].) Under an assignment, the relationship between the three parties involved (the landlord, the tenant, and the assignee) essentially substitutes the assignee for the original tenant. (7 Miller & Starr, *supra*, § 19:60, p. 165 ["assignee gains privity of estate with the landlord"].)

An assignment generally transfers the entire leasehold, but not if there is contractual language to the contrary. (7 Miller & Starr, *supra*, § 19:60, p. 164.) The authors emphasized that "[t]he tenant's leasehold estate is freely alienable *in the absence of an express covenant against assignment or subleasing*. It may be transferred voluntarily either by an assignment of the lease or by a sublease. [¶] The lease survives

an assignment. *Unless the assignment breaches an express covenant in the lease against assignment*, the lease remains in effect after an assignment." (7 Miller & Starr, *supra,* § 19:60, p. 163, fns. omitted.)

B. Options in Real Estate Context: Rules and Assignability

We have established above that a landlord is entitled to consider the identity and creditworthiness of the lessee in deciding whether to enter into the lease and whether to restrict its assignability. We next consider whether the same considerations may apply to restrict a right to exercise an option to extend the lease term.

This option to extend can be viewed either as a lease covenant or as a separate agreement/addendum. "Commercial tenants generally have strong economic motives for renewing a lease—notably, e.g., recovering a reasonable return on investments in trade fixtures, avoiding moving expenses, and maintaining the goodwill attached to the location. Thus, including an option to renew or extend in the ground lease may be an important requirement for a commercial tenant." (Real Property Transactions, *supra,* ¶ 7:133, p. 7-31; see 7 Miller & Starr, *supra,* § 19:60, pp. 163-165; also see 12 Witkin, Summary of Cal. Law, Real Property, § 527, p. 606 ["Technically, renewal of a lease involves the execution of a new instrument, whereas extension is a continuation in possession under the old lease, after notice under its provisions."].)

Here, Respondents produced parol evidence that it was a personal inducement to them to enter into the lease that it included an extension option that would be offered them. That evidence would be appropriately admitted only if the lease and option language was ambiguous and justified clarification through such extrinsic evidence. We

look to the lease and option language, read together on a de novo basis, to determine their ambiguity, if any, as to the permissible scope of that extension option.

The particular characteristics of option contracts must be considered here. "An option is merely an offer. The option agreement is a unilateral contract whereby, for consideration, the optionor promises not to revoke the offer in exchange for the act of the offeree of payment of the option consideration. . . . [¶] The option must contain material contract terms. Because the option is an offer to sell or buy the property that produces a binding contract on acceptance, it necessarily must contain all the material terms of purchase and sale that will be contained in the ultimate contract." (1 Miller & Starr, *supra,* § 2:7, pp. 19-20 [in a lease with an option to purchase, the provisions of the lease, including the rental to be paid, normally furnish consideration for the option to purchase].)

In particular, an option contract "must specify the parties, set forth the term of the option, identify the property, and specify the price and method of payment." (1 Miller & Starr, *supra,* § 2:7, p. 20, fns. omitted.) Option contracts can be assigned, but only subject to the normal limitations on the assignment of contracts. (*Id.* at p. 25.) In 1 Witkin, Summary of California Law, *supra*, Contracts, section 180, pages 215 to 216, the authors point out that generally, the offeror has the ability to restrict the power of acceptance of the offer.

The authors of Miller & Starr, California Real Estate, *supra*, further explain: "*In the absence of language in the lease indicating that the right to renew was intended as a personal right of the original tenant only*, an option to renew is regarded as a covenant

running with the land that is binding on successors who are in privity of estate. The successors of the tenant are entitled to its benefits, and the successors of the landlord are burdened with the duties and obligations that the covenant conferred and imposed on the original contracting parties. [¶] Therefore, an assignee from the tenant can exercise the renewal option and is entitled to the benefits of the additional term over the objections of the landlord. A successor in interest of a lessee may exercise an option to renew in the lease without a written assignment." (7 Miller & Starr, *supra*, § 19:42, p. 120; italics added, fns. omitted.)

Notwithstanding the above, contract rules permit restriction of options to extend leases. *Penilla v. Gerstenkorn* (1927) 86 Cal.App. 668, 670-671 (*Penilla*) stands for the proposition that: "*Unless otherwise specifically provided in the lease*, an option to extend is assignable to the leasehold transferee. [Citation.] [¶] However, a purchasing tenant will not be able to exercise an option to extend if the lease makes the option 'personal' to the selling tenant." (Real Property Transactions, *supra*, pp. 7-31 to 7-32; see also Civ. Code, § 1995.230 [providing that leases can absolutely prohibit transfer of a tenant's leasehold interest].)

In *Penilla*, the court reasoned that " '[t]he right of renewal constitutes a part of the tenant's interest in the land, and, *in the absence of a covenant to the contrary, may be sold and assigned by him*, and the benefits of this right may be enforced by the assignee.' " (*Penilla, supra*, 86 Cal.App. at p. 670; italics added.)

City of Orange v. San Diego County Employees Retirement Assn., supra, 103 Cal.App.4th 45, 51-52, sets forth the view that: " '[W]here there is an option contract,

there are two contracts, the option contract and the contract to which it relates.' [Citation.] The option contract 'is clearly different from the contract to which the irrevocable offer of the optionor relates, for the optionee by parting with special consideration for the binding promise of the optionor refrains from binding himself with regard to the contract or conveyance to which the option relates. . . .' " (See *Palo Alto Town & Country Village, Inc. v. BBTC Company* (1974) 11 Cal.3d 494, 499-500.)

The option in this case was to *extend* the lease, but by analogy, we may look to options to *purchase* the property. In *Spaulding v. Yovino-Young* (1947) 30 Cal.2d 138, 141-143 (*Spaulding*), the Supreme Court discussed a different type of lease, which did not contain an express option to extend, but instead only a holdover provision that ultimately converted the lease into a month-to-month tenancy. There, the court treated the option to purchase the property as expiring with the term of the lease, such that it could not be exercised by the tenant while holding over. After the lease term expired, the option to purchase was no longer part of the tenant's benefits under the lease. "*Unless the lease provides otherwise*, the option to purchase may be transferred by the tenant independent of the tenant's leasehold interest." (Real Property Transactions, *supra*, ¶ 8:82, p. 8-18.1, italics added.)

Although a tenant pays rent and this will normally amount to sufficient consideration to support a lease option to purchase, as well as the right to occupy the premises, the option to purchase still remains a separate portion of the lease, which does not remain effective beyond its original term. (*Spaulding*, *supra*, 30 Cal.2d 138, 142.) There, the life of the option was "correlate[d]" with the fixed term of the lease. (*Ibid*.) In

Spaulding, the plaintiffs' rights as lessees during the fixed term were to be distinguished from their subsequent rights as holdover month-to-month tenants.

The authors of Witkin, *supra*, Summary of California Law, Real Property, summarize the authority of *Spaulding, supra*, 30 Cal.2d 138, as follows: "If a lease contains an option to buy, and an extension or renewal occurs, either express or implied, *a difficult problem arises whether the option to buy is one of the terms and conditions of the original lease that remains in effect when the original period ends*. [¶] In *Spaulding v. Yovino-Young [supra]*, the court left open the question whether the option would survive an express renewal or extension, but held that it did not remain in existence for the benefit of a lessee merely holding over. . . . This new arrangement was only that of 'landlord-tenant rather than 'lessor-lessee.' The option was not an essential term or condition of the lease, but was severable." (12 Witkin, Summary of Cal. Law, § 536, p. 619.) Thus, the provision that allowed a holdover continuance of the tenancy created a separate and distinct right from that of the option originally given to purchase the property. "The latter privilege, though commonly found in a lease [citation], is not an essential covenant thereof, nor is it a term or condition of the demise. Thus, in the absence of a provision making the exercise of the option to purchase personal to the lessee [citation], such option may be separated from the lease and transferred by the lessee independently of the leasehold interest." (*Spaulding, supra*, 30 Cal.2d 138, 141.)

In determining the assignability of this option to extend, we are mindful that it could be read either as a lease covenant or a separate contract, independent of the related lease. The option to extend the lease in our case appears in the body of the lease, and in

an addendum to the lease, and each contains restrictive language as to who is eligible to exercise it (the original lessee). Paragraph A(iii) of the addendum reiterates that all the terms and conditions of the lease "except where specifically modified by this option shall apply," separating out the lease provisions granting the option.

We next consider which party was being offered the option, and whether the assignment language could change that.

C. Application: Lease, Option and Assignment Language

"[C]ourts will not 'read in' ambiguities where the lease language is plain and clear. If the contract was freely negotiated, and particularly where both sides had the benefit of independent counsel, a clear prohibition against 'subleases and assignments' -- as well as any other transfer restriction (subject to 'unconscionability' limitations, below) -- will be enforced according to its terms . . . notwithstanding that it might work a forfeiture." (Real Property Transactions, *supra,* ¶ 7:73, p. 7-17.)

In the lease, paragraph 12.1 requires that the lessee obtain consent from Landlord for any assignment of "all or any part of Lessee's interest in the lease or in the premises," although such consent shall not be unreasonably withheld. In the 2004 approved assignment, Landlord did not waive or relinquish any rights under the lease against either Image 2000, Lounge, Kreider, and/or Kalogianis.

Landlord takes the position that the "personal option" language for extension of the lease term was equivalent to a limitation on the lessee's ordinary right to assign leasehold provisions. (Miller & Starr, *supra,* § 19:42, pp. 120-121.) The personal option was offered to the original lessee only, as the party entitled to exercise the option. This

indicates that the option should be considered to be a personal right in the specified optionee, Image 2000.

We agree with Landlord that the personal option language is unambiguous as to the proper parties to the option portion of the lease, and it restricts the power to accept the offered option to the original lessee. This lease contains specific language indicating that the right to extend was intended as a personal right of the original tenant only. (7 Miller & Starr, *supra,* § 19:42, pp. 120-121.) As a threshold determination, "personal to Image 2000," unambiguously excludes Lounge. (*Winet, supra,* 4 Cal.App.4th at p. 1165.)

However, Landlord consented to the 2004 assignment of the leasehold interest. (Lease, par. 12.1.) That is not dispositive, since Respondents never attempted to demonstrate that Landlord and Respondents expressly agreed to a novation or modification of the original lease, to add a substitute tenant, nor that any sublease took place. (Real Property Transactions, *supra,* ¶ 7:66, p. 7-14.) The lease and the personal option granted to the original lessee were not modified by the actual assignment that was made. Parties to leases are generally allowed to restrict the assignability of its provisions. "*In the absence of a covenant or condition to the contrary*, the tenant may make an assignment or sublease." (12 Witkin, Summary of Cal. Law, *supra,* § 537, p. 619, italics added.) Paragraph A(iii) of the addendum applies all the terms and conditions of the lease to the option, "except where specifically modified by this option," which effectively separated the lease provisions (assignment) from the personal option.

We think the purported assignment by Image 2000 amounted to a breach of an express covenant in the lease to preserve the option to extend only in the original lessee,

and this served to prevent effective assignment of the option, because the specialized option language still remained in effect after the assignment. (7 Miller & Starr, *supra*, § 19:60, pp. 163-165.) The option originally given to extend the lease was not an essential covenant in the lease, and stated separate conditions for its exercise. The option remained personal to the original lessee. (See *Spaulding*, *supra*, 30 Cal.2d 138, 141-143.)

Extrinsic evidence cannot be admitted for proving a meaning that "flatly contradict[s] the express terms of the agreement [lease]." (*Winet*, *supra*, 4 Cal.App.4th at p. 1167.) It is not a reasonable construction that Landlord's consent to the general lease assignment included the "original lessee's" restricted option to extend, and expanded its scope. (*Ibid.*) "A contract usually is assignable unless it requires the personal skill, credit, or other personal quality of a party or unless the assignment will adversely affect the other parties' duties, burdens, or risks of not receiving the return performance. [¶] Therefore, if the contract provides for some personal performance by the buyer other than the payment of money, or the satisfaction of conditions precedent that require the personal efforts or skill of the buyer, the contract is not assignable by the buyer." (1 Miller & Starr, *supra*, § 1:22, p. 74, fns. omitted.)

At the time of the 2002 negotiations, it is undisputed that only Image 2000 had the necessary financial resources to enter into the lease, and it had not yet created its administrative entity, Lounge. Reasonable inferences can be drawn that Landlord had the contractual intent to grant the personal option solely to Image 2000, for that reason. Respondents did not controvert that.

This option to extend the lease, whether a separate and nonassignable lease covenant or a separate option agreement, is to be distinguished from the remaining leasehold interest that was subject to being transferred upon the consent of Landlord. The exercise of the option to extend was designated as personal to the original lessee. The option is more specific and separate from the lease assignment clause, and the assignment did not overcome the restriction of the option/offer to the original lessee, Image 2000.

Landlord's approval of the lease assignment did not waive or relinquish any rights under the lease against either Image 2000, Lounge, Kreider, and/or Kalogianis. The personal option language was tantamount to an agreement not to assign the specified personal option to extend. The lease effectively included an agreed-upon restriction on such assignment. (12 Witkin, Summary of Cal. Law, *supra*, § 555, pp. 637-638; see Civ. Code, § 1995.210, subd. (b).) Although normally, an ambiguity in a restriction on transfer of a tenant's interest in a lease must be construed in favor of transferability, the personal option's reference to the original lessee removes such ambiguity and requires that we enforce the restrictive nature of the option to extend, and disallow its assignability. (See 12 Witkin, Summary of Cal. Law, *supra*, § 555, pp. 637-638; applying Civ. Code, § 1995.220.)

IV

PAROL EVIDENCE ADMISSIBILITY QUESTIONS

As above, our de novo reading of the lease and option results in the conclusion that the personal option granted to the original lessee, Image 2000, was not ambiguous,

and the overall contractual intent of the parties, gleaned from the documents, does not support a reading of the lease, that the assignable rights under it could include any transfer of the personal option to a successor.

Notwithstanding the above conclusions, and in an abundance of caution, we next consider the additional arguments raised on appeal concerning parol evidence. Even if Respondents' parol evidence about their subjective belief and intents about the lease arrangement were properly considered, it does not support their arguments about assignment, on a substantial evidence basis. The trial court in this case received testimony about the parties' contractual intentions and decided that the contractual language was " 'reasonably susceptible' to the interpretation urged by [Respondents]." (*Winet, supra,* 4 Cal.App.4th 1159, 1165.) "Even if a contract appears unambiguous on its face, a latent ambiguity may be exposed by extrinsic evidence which reveals more than one possible meaning to which the language of the contract is yet reasonably susceptible." (*Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 912 (*Morey*).)

Assuming that we can and should deem the lease, assignability and option language to be ambiguous, we next inquire whether the extrinsic evidence was properly admitted to show, and substantially supports conclusions that, (1) the contractual intent of the parties was to grant Lounge the capacity to exercise the option to extend, as a lessee in possession, and (2) it did so properly, within the terms and conditions of the option language. (*Winet, supra,* 4 Cal.App.4th at p. 1166.)

A. Any Capacity to Exercise Option?

The general rule is that an option to renew or extend "must be accepted in strict accordance with its terms." (12 Witkin, Summary of Cal. Law, *supra*, § 531, p. 611.) "Proper exercise of an option is determined by reference to the rules of offer and acceptance . . . which means, under general contract law, the terms of the exercise (optionee's acceptance) must ordinarily be identical to the terms of the offer. [Citation.] [¶] Consequently, the optionee must give the optionor unconditional and unqualified notice of acceptance on the terms, in the manner and within the time period specified by the option provisions [offer to extend]." (Real Property Transactions, *supra*, ¶ 8:85-1, p. 8-19.)

The essential material terms of a real estate contract include the identity of the buyer [lessee], the identity of the seller [lessor], the identity of the property, and the purchase price. (*Patel v. Liebermensch* (2008) 45 Cal. 4th 344; 1 Miller & Starr, *supra*, (2009-2010 supp.) § 2:7, p. 23.) "To exercise an option to renew a lease, a tenant must apprise the lessor 'in unequivocal terms' of the unqualified intention to exercise the option within the time, in the manner, and on the terms stated in the lease." (12 Witkin, Summary of Cal. Law, *supra,* § 531, p. 612, relying on *Bekins Moving & Storage Co. v. Prudential Ins. Co.* (1985) 176 Cal.App.3d 245, 251 (*Bekins*).)

Kreider and Kalogianis testified that during negotiations, they dealt with the real estate agent of Landlord. Both personal guarantors wanted the opportunity to exercise the option, through another entity, to make sure that they could continue the venture if it proved profitable. Kalogianis testified that he thought he communicated this

understanding, before Image 2000 signed the lease. He argues that the parties intended that both Image 2000, the personal guarantors, and the assignee (when formed) would all continue to have joint responsibility for performing the lease, after the assignment was made.

Kreider testified that before they signed the lease, they had a conference call with Kugler that led him to believe that once the lease was signed, Image 2000 would go through a probation period of establishing credit as Image 2000, along with the personal guarantors. "Once we established credit or a good rapport with [Landlord], we wanted the lease to be under [Lounge Inc.]" However, when they discussed the assignment and obtained Landlord's approval of it, they never discussed the option further. The option states that it continues in effect all of the terms and condition of the lease, except where specifically modified by the option, and states that the option is personal to the original lessee.

The parol evidence relied on is not as forceful as Respondents represent in their brief, and it is only their side of the negotiations. It is well established that the subjective, uncommunicated intent of one of the parties cannot contradict the express provisions of a contract. (See *Alex Robertson Co. v. Imperial Casualty & Indemnity Co., supra*, 8 Cal.App.4th 338, 346.)

Although Kalogianis and Kreider testified that they intended at some point to create a new entity, Lounge, for administrative purposes to operate the business, that did not amount to a showing that Lounge became a party to the lease or to its option provisions, through modification or novation. According to Quin on behalf of the trust,

she did not deal directly with Kreider and Kalogianis, but had her agent do so. Kugler negotiated some changes to paragraphs 2.2 and 2.3 on the lease and Quin authorized those changes. However, Kugler never told Quin that Image 2000 wanted another tenant to be on the lease. As far as Landlord knew, only the existing media business, Image 2000, had the necessary resources and credit to enter into such a lease. No new contractual arrangement to add a new tenant, with Landlord's permission, was proven regarding the personal option to extend, before or after the assignment took place. No latent ambiguity was present that required clarification. (*Morey, supra*, 64 Cal.App.4th 904, 912.) It would contradict the plain language of the option provisions to add a new tenant or offeree to them. (*Winet, supra*, 4 Cal.App.4th at pp. 1165-1166.)

Other than the personal wishes of Kreider and Kalogianis, there is no evidence that the personal option was modified or the definition of the offeree was expanded, during negotiations or when the later assignment was made.

B. No Substantial Evidence Support for Valid Manner of Exercise of Option

Respondents next contended at trial that they effectively and timely exercised that option, and therefore Landlord breached the lease by refusing to accept it, so that declaratory relief in their favor should be issued. They argued they were qualified to exercise the option, because they were not in default within the terms of the leases, and that the manner of their doing so was adequate.

"Leases often contain options to renew, but careless language may create difficulties in enforcement. [Citations.] [¶] An unexercised option does not create a property right until exercise by compliance with its terms." (12 Witkin, Summary of Cal.

Law, *supra,* § 528, p. 608.) As stated in 7 Miller & Starr, *supra,* section 19:37, page 106: "[T]he option to renew depends on the continued viability of the lease contract, and therefore, the option generally must be exercised during the term of the lease and prior to the expiration of its term. Also, the payment of rent and the performance of the other terms of the lease are implied conditions precedent to the exercise of the option. Therefore, the tenant cannot exercise the option when in default in the payment of rent or other covenants in the lease." (Fns. omitted.)

Here, the standard addendum, option to extend, lists numerous conditions for the exercise of the option, such as providing the type of notice specified to Landlord. The other provisions of the lease were incorporated, except as specifically modified by the option, and they included paragraph 39 of the lease. That required the tenant to stay out of default, and that the original lessee remain in possession and negotiate the adjusted basic market value rent as specified. The option was personal and could be exercised "only while the original Lessee is in full possession of the premises and without the intention of thereafter assigning or subletting."

Landlord claims the statement of decision failed to sufficiently address which facts supported a conclusion that the Peters letter constituted a proper exercise of the option. The record shows that when Peters sent the letter to Landlord's attorney in reference to the ADA action, he requested that Landlord accept the letter "to serve as notice of Lessee's exercise of the option to extend" the lease. The letter does not specify which entity was the lessee, and it states its assumption that the notice of the exercise would be

timely and sufficient, and further, that it was not intended to waive any right or remedy of any of the Respondent clients.

We need not decide the substantive issue of whether Respondents were in breach of the lease when the Peters letter was sent, during the pendency of the ADA action. Nor will we decide the issues argued about the adequacy of the liability insurance that Respondents had maintained on the premises. Instead, we can conclude from the terms of the option and the testimony presented that the manner of exercise of the option was inadequate. First, even crediting the testimony of Respondents, Lounge did not obtain the right to exercise Image 2000's personal option to extend the lease, because Lounge was ineligible to notify Landlord "in unequivocal terms" of the unqualified intention to exercise the option, that belonged to another, "within the time, in the manner, and on the terms stated in the lease [option]." (*Bekins*, *supra*, 176 Cal.App.3d 245, 251.)

Next, notice was not given to Landlord in the manner required by the option, but rather to an attorney for Landlord in the related action, which was technically not within the scope of the option's coverage. Also, the notice given was highly equivocal, by "requesting" acceptance of the notice while reserving all rights, etc. No substantial evidence supports the trial court's conclusion that the option to extend was properly exercised by a party entitled to do so.

V

REMAINING UNLAWFUL DETAINER ISSUES

In light of the above conclusions on the Option Case, it is necessary to discuss their effect upon the UD action. Since Lounge did not properly exercise the option to

extend, that apparently left Image 2000 in place as the original lessee, until the expiration of the lease in April 2007. At that point, the occupant in possession started a month-to-month tenancy, and it has not been determined whether the lease requirements about insurance, etc., remained enforceable between the parties. Those issues remain for decision in the UD action. Even though the two principals, Kreider and Kalogianis, own both corporations and remain personal guarantors of the lease, it is unclear whether the previous notices given in the UD action should be deemed to be still effective, due to the passage of time and the summary nature of that remedy.

Although evidence was presented at trial from the insurance agent for Respondents, on whether the insurance policies she obtained on their behalf should be adequate to satisfy the requirements of the lease, it is not appropriate on this record to express any opinion on the adequacy of the liability insurance under the terms of the lease. The insurance disputes arose after the lease term expired, and a different form of tenancy is in place.

The proper procedure for unlawful detainer actions includes service of statutory notices, and the showing of an actionable form of default, which may include: "(1) the expiration of the term or termination of the tenancy; [¶] (2) a default in the payment of rent and service of a proper notice to quit; [¶] (3) a breach of a covenant or condition contained in the lease; [¶] (4) execution of an assignment or sublease contrary to the lease provisions; [etc.]." (7 Miller & Starr, *supra*, § 19:218, pp. 676-680, fns. omitted; Code Civ. Proc., § 1161 et seq.) We have now determined that there was no valid assignment of the option to extend, which was separate in nature from the leasehold estate. That does

not resolve all issues in the UD action. The matter must be returned to the trial court, with directions to enter judgment for Landlord on the Option Case, and allow further appropriate proceedings on the UD action. Within the discretion of the court, those proceedings may include requiring a new set of notices by Landlord, to provide an orderly resolution of the remaining unlawful detainer issues, as well as any necessary determinations about the adequacy of the liability insurance provided by Respondents, under all of the current circumstances.

DISPOSITION

The judgments are reversed with directions to enter judgment for Landlord on the Option Case and to allow such further proceedings as may be appropriate, in the court's discretion, on the unlawful detainer action. Each party to bear its own costs.

HUFFMAN, Acting P. J.

WE CONCUR:

McINTYRE, J.

IRION, J.